
COMMONWEALTH OF VIRGINIA



OFFICE OF THE GOVERNOR

Executive Order No. 42 (2011)

Allocation of a Portion of the Commonwealth's Share of the Calendar Year 2009 and 2010 National Limitation for Qualified School Construction Bonds Under the American Recovery and Reinvestment Act of 2009

Importance of the Issue

The American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 123 Stat. 355 (2009)) was enacted on February 17, 2009 ("ARRA"). ARRA added Section 54F to the Internal Revenue Code of 1986, as amended, ("IRC") to provide for the issuance of qualified school construction bonds ("QSCBs"). QSCBs are tax credit bonds that may be issued to finance the construction, rehabilitation, or repair of a public school facility or for qualifying public school facility land acquisitions ("Qualified Projects"). QSCBs were originally designed as taxable bonds providing the QSCB holder with a federal tax credit in lieu of interest. In the Hiring Incentives to Restore Employment Act (Pub. L. No. 111-147, 124 Stat. 71 (2010)), enacted March 18, 2010, Congress provided a direct payment subsidy option whereby an issuer of QSCBs could elect to receive a subsidy payment from the federal government on each interest payment date intended to be equal to the amount of coupon interest payable on such date.

A condition for the valid issuance of QSCBs is the receipt of an allocation of the national limitation under IRC Section 54F(c) sufficient to cover the maximum face amount of the QSCBs to be issued (a "Volume Cap Allocation"). IRC Section 54F created a national limitation of \$11 billion for each of calendar years 2009 and 2010, with a provision allowing carryforwards of any unused limitation amounts to calendar years after 2010. The U.S. Secretary of the Treasury made allocations of the calendar year 2009 and 2010 national limitation amounts to the states and certain "large local education agencies" in accordance with the formulae set forth in IRC Section 54F. Pursuant to Notice 2009-35 of the Internal Revenue Service (IRB 2009-17, dated April 27, 2009), the share of the calendar year 2009 national limitation allocated to the Commonwealth of Virginia (the "Commonwealth" or "Virginia") is \$191,077,000 (the "2009 Commonwealth Share") and, pursuant

to Notice 2010-17 (IRB 2010-14, dated March 17, 2010), the share of the calendar year 2010 national limitation allocated to the Commonwealth is \$172,249,000 (the "2010 Commonwealth Share").

IRC Section 54F(d)(1) provides that the national limitation amount allocated to a state for any calendar year shall be allocated by a "state agency" to qualified issuers within the state. The General Assembly has provided no specific guidance on how such allocations are to be made in Virginia.

Reference is made to Executive Order 34 (2011), issued June 10, 2011 ("Executive Order 34") for the prior applications of the 2009 and 2010 Commonwealth Shares and the determination of the basis on which the below-described allocations are being made. Unless otherwise defined herein, each capitalized term used below has the meaning given it in Executive Order 34.

As of the date of this Executive Order, the amount remaining (the "Carryforward Amount") from the 2009 and 2010 Commonwealth Shares is \$162,151,000.

On March 2, 2011, the Virginia Department of Education ("VDOE") announced the allocation of the entire remaining 2009 and 2010 Commonwealth Shares to fully or partially fund 41 new construction, renovation, and expansion application-based projects in 33 school divisions. Such announcement will be referred to below as the "VDOE Announcement."

On June 28, 2011, the Virginia Public School Authority ("VPSA") issued its first calendar year 2011 QSCBs series with a Volume Cap Allocation made pursuant to the VDOE Announcement and finalized pursuant to Executive Order 34.

VPSA is scheduled to issue the second calendar year 2011 QSCBs series (the "2011-2 QSCBs") by mid-December 2011.

By the terms of the VDOE Announcement, the allocations to the school divisions and projects were deemed to be preliminary until the eligibility of each project for QSCB financing was determined through detailed project review. The VDOE Announcement indicated that prior to the sale of the applicable QSCBs, the final qualifying projects and project issuance amounts would be formally set out in an Executive Order. VDOE has advised me of the qualifying projects and maximum face amounts of QSCBs for each such project proposed to be included in the 2011-2 QSCBs. Such projects and the localities in which they are located will be referred to below respectively as the "Awarded Projects" and the "Awarded Localities." An additional Executive Order is anticipated to be issued prior to each future sale of QSCBs by VPSA.

Accordingly, by virtue of the powers invested in me by Article V of the Constitution of Virginia and § 2.2-103 of the *Code of Virginia* of 1950, as amended, as Governor of the Commonwealth of Virginia, I hereby provide a Volume Cap Allocation to VPSA pursuant to IRC Section 54F(d)(1) from the Carryforward Amount in an amount sufficient for VPSA to issue QSCBs for the benefit of each of the Awarded Localities listed below in an aggregate face amount up to the respective maximum face amount listed below. Although it is anticipated that the Awarded Localities will participate in VPSA's 2011-2 QSCBs sale, the portion of the Volume Cap Allocation provided for any Awarded Locality will remain in effect and can be used in any VPSA QSCB sale until the expiration date described below. The first priority use of the sale and investment proceeds of such QSCBs (the "Local Available Project Proceeds") shall be to finance qualifying costs of the respective Awarded Projects listed below.

The Awarded Localities and Awarded Projects:

**Awarded
Locality**

**Awarded
Project**

**Maximum Face
Amount**

Albemarle County	Addition to Mary Carr Greer Elementary	\$ 2,000,000
Charlotte County	Renovation of Randolph Henry High	1,500,000
City of Chesapeake	Expansion and renovation of Indian River High	5,000,000
Dickenson County	Construction of new consolidated middle/high school	10,000,000
Essex County	Expansion and renovation of Essex High	10,000,000
City of Falls Church	Expansion and renovation of Thomas Jefferson Elementary	3,000,000
Fauquier County	Expansion and renovation of Fauquier High	10,000,000
Frederick County	New pupil transport facility	7,000,000
Gloucester County	Purchase land for new middle school site	500,000
King George County	Renovation of Potomac Elementary	5,000,000
Loudoun County	Construction of new Leesburg-area elementary school	5,000,000
Lunenburg County	Expansion and renovation of Central High	5,000,000
City of Martinsville	Expansion of Martinsville High	10,500,000
Montgomery County	Construction of new Blacksburg High	15,000,000
Richmond County	Conversion and renovation of existing high school building as new Richmond County Intermediate	5,000,000
Rockbridge County	Expansion and renovation of Maury River Middle	7,500,000
Smyth County	Construction of new elementary school and renovation of Smyth-Marion Primary	9,500,000
City of Suffolk	Construction of new elementary school	7,500,000
Williamsburg-James City County	Expansion of Jamestown High	1,000,000
Wise County	Construction of new consolidated high school	15,000,000

An Awarded Locality must give first priority to the application of its Local Available Project Proceeds to complete the scope of work described in the approved project application for its Awarded Project.

VDOE is directed to establish a procedure to ensure that the Local Available Project Proceeds are used to finance public school projects within an Awarded Locality ("Additional Projects") to the extent such proceeds are in excess of the amounts needed to complete the scope of work on the locality's Awarded Project. Such Additional Projects (i) must be projects that will qualify for QSCB financing under the applicable provisions of federal and Virginia law; (ii) must be able to utilize the

unspent Local Available Project Proceeds within the three years after the issue date of the respective QSCBs; and (iii) should be evaluated against the following criteria: consolidation projects, projects eliminating overcrowding, projects replacing facilities more than 35 years old, and projects creating school-wide, high-speed computer networks.

Any locality receiving a Volume Cap Allocation under the VDOE Announcement may waive its allocation by notifying VDOE in writing. VDOE is authorized to reallocate any waived Volume Cap Allocations to address emergency situations in any school division arising from: the 5.8 magnitude earthquake that occurred on August 23, 2011; Hurricane Irene; or other bona fide emergency situation significantly affecting the condition of a public school building. Any such reallocation will be effective until the June 30, 2012, expiration date described below. In addition, as approved by VDOE, an Awarded Locality may apply all or a portion of its Local Available Project Proceeds to an alternative school project where the condition of such school has been significantly affected by a bona fide emergency situation. Any project undertaken pursuant to this paragraph shall be a project that will qualify for QSCB financing under federal and Virginia law.

By June 30, 2012, VPSA shall provide to the Superintendent of Public Instruction the completed Internal Revenue Service reporting form (or forms) then in effect for the QSCBs for those QSCBs issued pursuant to the Volume Cap Allocations made to VPSA pursuant to this order. Any portion of such Volume Cap Allocations not used by June 30, 2012 will expire and be deemed waived by the VPSA, and I will direct VDOE to establish procedures for reallocating the waived Volume Cap Allocations.

I hereby authorize the Superintendent of Public Instruction to provide certificates of compliance with IRC Section 54F(c) as may be requested by VPSA.

Effective Date of this Executive Order

This Executive Order shall be effective as of November 22, 2011, without any further act or filing.

Given under my hand and under the Seal of the Commonwealth of Virginia this 22nd day of November, 2011.

/s/ Robert F. McDonnell, Governor

Attest:

/s/ Secretary of the Commonwealth